

APR 19 2005

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of:)
)
Republican Party of Arkansas and Charles) MUR 5428
Mazander, in his official capacity as treasurer)
)
Lloyd E. Lindsey, in his personal capacity)

GENERAL COUNSEL'S REPORT #3

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FEDERAL ELECTION
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I. ACTIONS RECOMMENDED

Accept the attached conciliation agreement with the Republican Party of Arkansas and Charles Mazander, in his official capacity as treasurer; take no further action against former treasurer Lloyd E. Lindsey, in his personal capacity; and close the file.

II. BACKGROUND

This matter arose from a referral from the Audit Division based on an audit of the Republican Party of Arkansas ("the RPA") that found, *inter alia*, that the RPA misstated its financial activity, failed to report or to properly itemize hundreds of thousands of dollars in receipts and disbursements and accepted apparent excessive and prohibited contributions. The audit also found significant problems with the RPA's handling of disbursements made for shared federal and non-federal activity ("allocable expenses") in that it often failed to allocate such expenses between its federal and non-federal accounts, improperly allocated those expenses, and/or failed to pay for those expenses through a federal account. Moreover, the RPA failed to provide documentation establishing that many of the expenses were indeed allocable. As a result, the audit calculated that the RPA potentially underpaid the federal share of allocable expenses by \$1,576,104 and used an additional \$136,037 in non-federal funds to pay for the

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1 federal share of expenses that should have been allocated but was not.¹ Because Arkansas state
2 law permits corporate contributions and unlimited contributions to political parties, the fact that
3 the RPA underpaid its federal share of allocable expenses resulted in the use of federally-
4 impermissible funds to finance federal election activities.

5 Based on these audit findings, the Commission found that there was reason to believe
6 that the RPA and its treasurer violated 2 U.S.C. §§ 432(c) and (d), 433(b)(6), 433(c), 434(b)(1),
7 (2) and (4), 434(b)(3)(A), (B), (C), (D) and (G), 434(b)(5)(A), 434(b)(8), 441a(f), 441b, and
8 11 C.F.R. §§ 102.5(a), 102.9(a), (b) and (c), 104.3(a)(4)(iii)(B), 104.3(b)(3)(i), 104.10(b),
9 104.11, 106.5(a) and 106.5(g). The Commission authorized conciliation with the RPA and its
10 treasurer prior to a finding of probable cause to believe and approved a conciliation agreement
11 with them. In addition, the Commission found reason to believe that Lloyd E. Lindsey, the
12 RPA's treasurer during the election cycle at issue, in his personal capacity, violated 2 U.S.C.
13 §§ 434, 441a, and 441b.

¹ These undocumented disbursements included \$333,581 in disbursements reported as being in support of congressional candidate Jay Dickey. This raised the possibility that the RPA made an excessive contribution or an unreported independent expenditure. Information we have obtained indicates that most of these disbursements were likely for issue ads referencing Dickey or his opponent, and as such, were allocable.

1 Additionally, in light of this favorable settlement with the RPA and Lloyd E. Lindsey's
2 lack of personal involvement in the conduct giving rise to the violations, we also recommend that
3 the Commission take no further action against Mr. Lindsey as discussed in Section II.B.

4 **III. DISCUSSION**

5 **A. Conciliation Agreement with the RPA**

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B. Lloyd E. Lindsey, the RPA's Former Treasurer

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At the time the Commission considered the First General Counsel's Report, it also found reason to believe that the RPA's treasurer during the 2000 election cycle, Lloyd E. Lindsey, in his personal capacity, violated 2 U.S.C. §§ 434, 441a and 441b.

Given the conciliation agreement negotiated with the RPA, particularly the substantial civil penalty, the RPA's agreement to compliance oversight measures, and its generally cooperative attitude during conciliation, we believe little would be gained by pursuing Mr. Lindsey in his personal capacity. Moreover, Mr. Lindsey has described to us his relatively limited role as the RPA treasurer -- he principally relied on the RPA's then-executive and

1 finance directors to perform daily duties, such as depositing contributions and signing checks,
2 and other financial duties, such as preparing the RPA's disclosure reports and
3 other reports about the Committee's finances.

4 Based on his lack of personal involvement in the conduct giving rise to the violations and
5 the favorable settlement with the RPA, we recommend that the Commission take no further
6 action against Lloyd E. Lindsey, in his personal capacity, and close the file.

7 **IV. RECOMMENDATIONS**

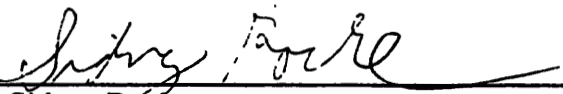
- 8 1. Accept the attached conciliation agreement with the Republican Party of Arkansas
9 and Charles Mazander, in his official capacity as treasurer.
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11 2. Take no further action against Lloyd E. Lindsey, in his personal capacity.
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13 3. Close the file.
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15 4. Send the appropriate letters.
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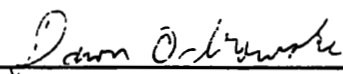
Lawrence H. Norton
General Counsel

4/19/05
Date

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WJR

17 Attachment
18 Signed Conciliation Agreement
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